

AMENDED IN ASSEMBLY MARCH 28, 2017

CALIFORNIA LEGISLATURE—2017–18 REGULAR SESSION

ASSEMBLY BILL

No. 699

Introduced by Assembly Members O'Donnell and Chiu
(Coauthors: Assembly Members Gipson and Santiago)
(Coauthor: Senator Mendoza)

February 15, 2017

An act to amend Sections 200, 220, and 234.1 of, and to add Article 5.7 (commencing with Section 234.7) to Chapter 2 of Part 1 of Division 1 of Title 1 of, the Education Code, relating to educational equity.

LEGISLATIVE COUNSEL'S DIGEST

AB 699, as amended, O'Donnell. Educational equity: immigration status.

Existing law states the policy of the State of California to afford all persons in public schools, regardless of their disability, gender, gender identity, gender expression, nationality, race or ethnicity, religion, sexual orientation, or any other specified characteristic, equal rights and opportunities in the educational institutions of the state. Existing law prohibits discrimination on the basis of those specific characteristics in any program or activity conducted by an educational institution that receives, or benefits from, state financial assistance or enrolls pupils who receive state student financial aid. Existing law requires the State Department of Education to assess whether local educational agencies have taken certain actions related to educational equity, including adopting a policy that prohibits, and adopting a process for receiving and investigating complaints of, discrimination, harassment, intimidation, and bullying based on those actual or perceived specified characteristics.

This bill would include immigration status in the specified characteristics for purposes of those provisions. The bill would prohibit school officials and ~~employees~~, *employees of a school district, county office of education, or a charter school*, except as required by state law, from collecting information or documents about the immigration status of pupils or their family members or allowing an officer or employee of United States Immigration and Customs Enforcement (*ICE*) to enter a schoolsite without providing valid identification, a *written* statement of purpose, *a valid judicial warrant or court order*, and receiving approval from ~~the principal or district superintendent~~, *the superintendent of the school district, the superintendent of the county office of education, or the principal of the charter school, as applicable*. The bill would require the local educational agency, if the officer or employee of *ICE* meets those requirements, to limit access to facilities where pupils are not present. The bill would require the superintendent of a school district, the superintendent of a county office of education, and the principal of a charter school, as applicable, to report to the respective governing board or body of the local educational agency in a timely manner any requests for information or access to a schoolsite by an officer or employee of *ICE* in a manner that ensures the confidentiality and privacy of any potentially identifying information. The bill would encourage a school, when an employee of the school is aware that a pupil's parent or guardian is not available to care for the pupil, *to work with parents or guardians to update the emergency contact information and* not to contact Child Protective Services to arrange for the pupil's care unless the school is unable to arrange for care through the use of emergency contact information or instructions provided by the pupil's parent or guardian. The bill would require the governing board ~~of a school district~~ *or body of a local educational agency* to perform specified actions relating to pupils and immigration status, including, among others, providing appropriate counseling to pupils who may be affected by enforcement activities of immigration agents. By imposing additional duties on ~~school districts~~, *local educational agencies*, the bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state,

reimbursement for those costs shall be made pursuant to the statutory provisions noted above.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. The Legislature finds and declares all of the
2 following:

3 (a) The United States was founded on the principles of freedom
4 and opportunity and is a refuge for the oppressed, the persecuted,
5 and those looking for a better life. We honor the attainment of
6 education for the betterment of the individual and the community.

7 (b) In June 1982, the United States Supreme Court issued Plyler
8 v. Doe (457 U.S. 202), a landmark decision holding that states
9 cannot constitutionally deny students a free public education based
10 on immigration status. The Supreme Court found that any resources
11 that might be saved from excluding undocumented children from
12 public schools were far outweighed by the harms imposed on
13 society at large from denying these students an education.

14 (c) For more than 30 years, Plyler v. Doe has ensured equal
15 access to education for children regardless of immigration status,
16 but anti-immigrant sentiment continues to threaten that right,
17 including states and localities passing measures and adopting
18 unofficial policies that violate the spirit of the United States
19 Supreme Court's decision.

20 (d) Nowhere else in the nation has been more enriched by the
21 contributions of immigrants than California, which is home to
22 more foreign-born residents than anywhere else in the country.
23 Immigrants play a vital role in all sectors of our state's economy
24 and are valuable and essential members of the California
25 community.

26 (e) Almost one in three Californians is foreign born and one in
27 two children in California has at least one immigrant parent.

28 (f) Children are entitled to a public education while in California,
29 regardless of immigration status. With adequate protections in
30 place, we will show that we are willing to take the steps necessary
31 to ensure that our students have every opportunity to continue their
32 education without fear or undue risk.

1 (g) A positive school climate is one in which students, educators,
2 and staff feel safe, welcomed, supported, and connected. Studies
3 show that healthy school climates contribute to academic
4 achievement and other positive outcomes for students. In an effort
5 to create a positive school climate, California schools must take
6 steps to protect the integrity of their learning environments for all
7 children.

8 (h) With great risks of changes to approaches to immigration
9 policies and enforcement at the federal level, it is more important
10 than ever for California to work to protect students and ensure
11 that, regardless of their immigration status, they may continue to
12 take advantage of the education to which they are entitled, free
13 from intimidation or risk of a loss of access to resources and
14 programs that other students enjoy.

15 SEC. 2. Section 200 of the Education Code is amended to read:

16 200. It is the policy of the State of California to afford all
17 persons in public schools, regardless of their disability, gender,
18 gender identity, gender expression, nationality, race or ethnicity,
19 immigration status, religion, sexual orientation, or any other
20 characteristic that is contained in the definition of hate crimes set
21 forth in Section 422.55 of the Penal Code, equal rights and
22 opportunities in the educational institutions of the state. The
23 purpose of this chapter is to prohibit acts that are contrary to that
24 policy and to provide remedies therefor.

25 SEC. 3. Section 220 of the Education Code is amended to read:

26 220. No person shall be subjected to discrimination on the basis
27 of disability, gender, gender identity, gender expression,
28 nationality, race or ethnicity, immigration status, religion, sexual
29 orientation, or any other characteristic that is contained in the
30 definition of hate crimes set forth in Section 422.55 of the Penal
31 Code in any program or activity conducted by an educational
32 institution that receives, or benefits from, state financial assistance
33 or enrolls pupils who receive state student financial aid.

34 SEC. 4. Section 234.1 of the Education Code is amended to
35 read:

36 234.1. The department, pursuant to subdivision (b) of Section
37 64001, shall monitor adherence to the requirements of Chapter 5.3
38 (commencing with Section 4900) of Division 1 of Title 5 of the
39 California Code of Regulations and this chapter as part of its
40 regular monitoring and review of local educational agencies,

1 commonly known as the Categorical Program Monitoring process.
2 The department shall assess whether local educational agencies
3 have done all of the following:

4 (a) Adopted a policy that prohibits discrimination, harassment,
5 intimidation, and bullying based on the actual or perceived
6 characteristics set forth in Section 422.55 of the Penal Code and
7 Section 220 of this code, and disability, gender, gender identity,
8 gender expression, nationality, race or ethnicity, immigration status,
9 religion, sexual orientation, or association with a person or group
10 with one or more of these actual or perceived characteristics. The
11 policy shall include a statement that the policy applies to all acts
12 related to school activity or school attendance occurring within a
13 school under the jurisdiction of the superintendent of the school
14 district.

15 (b) Adopted a process for receiving and investigating complaints
16 of discrimination, harassment, intimidation, and bullying based
17 on any of the actual or perceived characteristics set forth in Section
18 422.55 of the Penal Code and Section 220 of this code, and
19 disability, gender, gender identity, gender expression, nationality,
20 race or ethnicity, immigration status, religion, sexual orientation,
21 or association with a person or group with one or more of these
22 actual or perceived characteristics. The complaint process shall
23 include, but not be limited to, all of the following:

24 (1) A requirement that, if school personnel witness an act of
25 discrimination, harassment, intimidation, or bullying, they shall
26 take immediate steps to intervene when safe to do so.

27 (2) A timeline to investigate and resolve complaints of
28 discrimination, harassment, intimidation, or bullying that shall be
29 followed by all schools under the jurisdiction of the school district.

30 (3) An appeal process afforded to the complainant should he or
31 she disagree with the resolution of a complaint filed pursuant to
32 this section.

33 (4) All forms developed pursuant to this process shall be
34 translated pursuant to Section 48985.

35 (c) Publicized antidiscrimination, anti-harassment,
36 anti-intimidation, and antibullying policies adopted pursuant to
37 subdivision (a), including information about the manner in which
38 to file a complaint, to pupils, parents, employees, agents of the
39 governing board, and the general public. The information shall be
40 translated pursuant to Section 48985.

(d) (1) Provided, incident to the publicizing described in subdivision (c), to certificated schoolsite employees who serve pupils in any of grades 7 to 12, inclusive, who are employed by the local educational agency, information on existing schoolsite and community resources related to the support of lesbian, gay, bisexual, transgender, and questioning (LGBTQ) pupils, or related to the support of pupils who may face bias or bullying on the basis of religious affiliation, or perceived religious affiliation.

(2) As used in this subdivision, both of the following apply:

(A) Schoolsite resources may include, but are not limited to, peer support or affinity clubs and organizations, safe spaces for LGBTQ or other at-risk pupils, counseling services, staff who have received antibias or other training aimed at supporting these pupils or who serve as designated support to these pupils, health and other curriculum materials that are inclusive of, and relevant to, these pupils, online training developed pursuant to Section 32283.5, and other policies adopted pursuant to this article, including related complaint procedures.

(B) Community resources may include, but are not limited to, community-based organizations that provide support to LGBTQ or other at-risk pupils and their families, and physical and mental health providers with experience or training in treating or supporting these pupils.

(e) Posted the policy established pursuant to subdivision (a) in all schools and offices, including staff lounges and pupil government meeting rooms.

(f) Maintained documentation of complaints and their resolution for a minimum of one review cycle.

(g) Ensured that complainants are protected from retaliation and that the identity of a complainant alleging discrimination, harassment, intimidation, or bullying remains confidential, as appropriate.

(h) Identified a responsible local educational agency officer for ensuring school district or county office of education compliance with the requirements of Chapter 5.3 (commencing with Section 4900) of Division 1 of Title 5 of the California Code of Regulations and this chapter.

(i) Nothing in this section shall be construed to require school employees to engage with religious institutions in the course of identifying community support resources pursuant to this section.

SEC. 5. Article 5.7 (commencing with Section 234.7) is added to Chapter 2 of Part 1 of Division 1 of Title 1 of the Education Code, to read:

Article 5.7. Pupil Protections Relating to Immigration Status

234.7. (a) Except as required by state law, school officials and employees of a local educational agency shall not do either of the following:

(1) Collect information or documents about the immigration status of pupils or their family members.

(2) Allow an officer or employee of United States Immigration and Customs Enforcement (*ICE*) to enter a schoolsite for any purpose without providing valid identification, a written statement of purpose, a valid judicial warrant or court order, and receiving approval from the principal of the school or the superintendent of the school district, the superintendent of the county office of education, or the principal of the charter school, as applicable.

(b) (1) If an officer or employee of *ICE* meets all of the requirements set forth in paragraph (2) of subdivision (a), the local educational agency shall limit access to facilities where pupils are not present.

(2) The superintendent of a school district, the superintendent of a county office of education, and the principal of a charter school, as applicable, shall report to the respective governing board or body of the local educational agency in a timely manner any requests for information or access to a schoolsite by an officer or employee of *ICE* in a manner that ensures the confidentiality and privacy of any potentially identifying information.

~~(b)~~

(c) If an employee of a school is aware that a pupil's parent or guardian is not available to care for the pupil, the school shall first ~~comply with~~ exhaust any parental instruction relating to the pupil's care. ~~If there is no parental instruction, the school shall exhaust care in the emergency contact information it has for the pupil to~~ arrange for the pupil's care. A school is encouraged to work with parents or guardians to update the emergency contact information and not to contact Child Protective Services to arrange for the pupil's care unless the school is unable to arrange for care through

1 the use of emergency contact information or other information or
2 instructions provided by the parent or guardian.

3 (e)

4 (d) The governing board *or body* of a ~~school district~~ *local*
5 *educational agency* shall do all the following:

6 (1) Provide appropriate counseling to pupils who may be
7 affected by enforcement activities of immigration agents that occur
8 at a pupil's home, in a pupil's community, or at the place of
9 employment of a pupil's parent or guardian.

10 (2) Provide information to parents and ~~guardians~~ *guardians, as*
11 *appropriate*, regarding their children's right to a free public
12 education, regardless of immigration status or religious beliefs.
13 *This information shall include written "know your rights"*
14 *information relating to immigration enforcement and include*
15 *referrals to reputable community and legal organizations that*
16 *offer assistance to immigrants.*

17 (3) Educate pupils about the negative impact of bullying other
18 pupils based on their actual or perceived immigration status or
19 their religious beliefs and customs.

20 (e) *Nothing in this section prohibits the governing board or*
21 *body of a local educational agency from establishing stronger*
22 *standards and protections.*

23 (f) *For purposes of this section, "local educational agency"*
24 *means a school district, county office of education, or charter*
25 *school.*

26 SEC. 6. If the Commission on State Mandates determines that
27 this act contains costs mandated by the state, reimbursement to
28 local agencies and school districts for those costs shall be made
29 pursuant to Part 7 (commencing with Section 17500) of Division
30 4 of Title 2 of the Government Code.